

REMARKS

Applicants thank the Examiner for consideration of the present application. This amendment is filed in response to the Final Office Action dated July 11, 2008 and contemporaneously with a Request for Continued Examination. Claims 1-4 and 6-17 are pending in this application. Each of claims 1-4 and 6-17 stand rejected in the 07/11/2008 Office Action. Claims 1, 3, 6, 8, 10, and 12 have been amended. Reconsideration of each of the rejected claims in light of the remarks below is respectfully requested.

35 U.S.C. §102(b) REJECTIONS

Claims 1-4 and 6-9 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,066,160 to Colvin et al. (hereinafter “Colvin”).

Discussion: Independent Claims 1 and 6

Although the 07/11/2008 Office Action asserts that Colvin teaches “passing a suture through the first anchor lumen (14A) while traveling a first direction . . . and by returning through the first anchor lumen (14B) while traveling in a second and opposite direction”, Colvin fails to teach that the suture travels through the *same* lumen. (07/11/2008 Office Action, Page 5, Paragraph No. 6). Rather, the suture of Colvin travels through separate lumens 14(a) and 14(b) of the main member 12. Claims 1 and 6, however, recite a suture traveling in the first and second directions through the same lumen of the same cannula of the first anchor as discussed in detail in Applicants’ Response to Office Action dated March 26, 2008.

Regardless, in order to further clarify this element of these claims and expedite prosecution, Applicants have amended claims 1 and 6 to recite “a first anchor . . . having a cannula defined therein, the cannula including a first lumen” and wherein “the suture connects

the first anchor to the second anchor by passing through the first lumen of the cannula of the first anchor while traveling in a first direction . . . and by returning through the first lumen of the cannula of the first anchor while traveling in a second and opposite direction.” Again, the suture travels in the first and second directions through the same lumen (i.e., the “first lumen”) of the same cannula of the first anchor. Colvin does not disclose or suggest such a feature.

As set-forth in the 07/11/2008 Office Action, Colvin teaches a main member 12 (or 72) including two lumens (i.e., apertures 14(a) and 14(b) or apertures 74(a) and 74(b)). As noted by Colvin, the apertures 14(a) and 14(b) “cooperate as pairs, each member receiving one of the two ends of the suture being secured.” (Colvin, col. 8, lines 38-40). Further, FIG. 4 of Colvin clearly shows suture 16 threaded through the first lumen 14(a) and then through the second lumen 14(b). In other words, the suture 16 of Colvin is threaded only once, and in only one direction, through each lumen 14(a) and 14(b). As such, Colvin teaches the use of multiple lumens through which the suture 16 is threaded in a single direction. Colvin, however, fails to disclose or suggest threading a suture through a single lumen (i.e., the “first lumen”) in opposite directions as recited in amended claims 1 and 6. Further, not only does Colvin fail to disclose or suggest the threading of a suture through a single lumen in multiple directions, such a configuration would simply not work with the device disclosed in Colvin. For at least this reason, Colvin fails to anticipate amended claims 1 and 6.

Claims 1 and 6 have further been amended to recite “the first anchor being shaped to seat below the first surface of the soft tissue.” Although the 07/11/2008 Office Action asserts that Colvin teaches “the first anchor is shaped (a circular, disc-shape) to seat below a first surface of a meniscus,” an anchor having a circular, disc-shape as shown in Colvin is simply not “shaped to seat below the first surface of the soft tissue” as recited in amended claims 1 and 6. Rather,

the “first anchor 30” of Colvin is configured to abut or otherwise sit on the surface of the soft tissue being repaired. For example, Colvin repeatedly teaches that the main member 12 (which includes lumens 14(a) and 14(b)) is designed to *not* damage the soft tissue of the patient (see, e.g., col. 8, ll. 10-15, 23-30). Because the anchor of Colvin cannot seat below the surface of the soft tissue without damaging the soft tissue, it simply cannot be said that the anchor of Colvin is “shaped to seat below the first surface of the soft tissue.” As taught in Applicants’ specification, an anchor designed to abut the soft tissue of the patient, rather than bury into the patient’s soft tissue, is not shaped to seat below the surface of such soft tissue (see Applicants specification, page 5, lines 18-25). As such, Colvin fails to disclose an anchor “shaped to seat below the first surface of the soft tissue,” as recited in amended claims 1 and 6.

Accordingly, for at least the reasons provided above Colvin fails to disclose each and every element of amended claims 1 and 6. As such, Colvin fails to anticipate these claims. Therefore, claims 1 and 6 are believed to be in condition for allowance and such action is respectfully requested.

Discussion: Claims 2-4 and 7-9

Claims 3 and 8 have been amended for consistency with amended independent claims 1 and 6. Claims 2-4 include claim 1 as a base claim and claims 7-9 include claim 6 as a base claim. For at least the reasons provided above in regard to amended claims 1 and 6, each of these claims is believed to be in condition for allowance. In light of the reasons for allowance of claims 1 and 6, any arguments specific to claims 2-4 and 7-9 are held in abeyance without prejudice or admission to any assertion made by the Examiner in order to expedite prosecution.

35 U.S.C. §103(b) REJECTIONS

Claims 10-14 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Golds (U.S. Patent No. 5,383,905) in view of Pierce (U.S. Patent No. 4,823, 794). Claims 15 and 16 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over Golds in view of Pierce and in further view of Morell (U.S. Patent No. 3,952,377).

Discussion: Independent Claim 10

Claim 10 has been amended to recite “the first anchor having a frustoconical end shaped to bury into and seat below the first surface of the soft tissue.” Neither Golds, Pierce, or Morell teach such an anchor. In regard to Golds, the “first anchor (10)” of Golds is cylindrically shaped and configured to abut or otherwise sit on the surface of the tissue portion 50 as clearly illustrated in FIGS. 6 and 9 of Golds. Similarly, the anchor or pledget 62 of Pierce has a rectangular shape and is configured to abut or otherwise sit on the surface of the tissue segment 54 as clearly illustrated in FIG. 5 of Pierce. The anchoring device of Morell is also cylindrically shaped similar to the anchor of Golds. As such, none of these references disclose or suggest, at least, the first anchor as claimed in amended claim 10. Accordingly, for at least this reason, claim 10 is believed to be in condition for allowance and such action is respectfully requested.

Discussion: Claims 11-17

Claim 12 has been amended for consistency with amended independent claim 10. Each of claims 12-17 include claim 1 as a base claim. For at least the reasons provided above in regard to amended claim 10, each of these claims is believed to be in condition for allowance. In light of the reasons for allowance of claim 10, any arguments specific to claims 12-17 are held in

abeyance without prejudice or admission to any assertion made by the Examiner in order to expedite prosecution.

CONCLUSION

In view of the foregoing, claims 1-4 and 6-17 are believed to be in condition for allowance. Action to that end is hereby solicited. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 261-7959.

It is respectfully requested that this paper be considered as a petition for a one-month extension of time extending the deadline of this response to November 11, 2008. The Commissioner is hereby authorized to charge the fee of \$130.00 for this one-month extension of time, and any shortages or overpayments of fees, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 26502-73682.

Respectfully submitted,

BARNES & THORNBURG LLP



Glen M. Kellett
Registration No. 60,202
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3535
Telephone: (317) 261-7959
Fax: (317) 231-7433